

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1171 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

KIRAN @ KAJU BADIYA BHAMBHOR

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR.RM CHAUHAN,AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 22/06/98

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India has challenged the order of detention dated 11-12-1997 passed by the Commissioner of Police, Ahmedabad under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the Act"). In the grounds of detention of the even date supplied to the detenu, the detaining authority has placed reliance on six theft

cases of gold and silver ornaments registered against the petitioner by the Ellisbridge Police Station, Ahmedabad from 13-11-1997 to 30-11-1998 wherein the investigation has commenced. Over and above these criminal cases, reliance is also placed on the statements of two witnesses for the incidents of 13-11-97 and 22-11-97 when the petitioner and his men had gone to the shop of the witnesses for disposal of the golden articles and as the witnesses suspected doubt and when they refused to purchase, the witnesses were dragged out from their shops and were brought to the public place and beaten in presence of large crowd. The crowd thereafter was not only threatened by the detenu but the detenu also rushed towards them with knife because of which the crowd started running helter-skelter and a reign of terror was created. Considering this material on record, the detaining authority was satisfied that with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to detain the detenu and hence the order of detention came to be passed against the detenu-petitioner.

This petition is required to be allowed on the first submission advanced on behalf of the petitioner by his learned Advocate . She has contended that even if the allegations made against the petitioner are accepted on their face value, in that case also, the same may amount to breach of law and order but they cannot be construed as breach of public order.

Having gone through the statements of the witnesses, it can safely be observed that these are the cases against individuals and the public in general is not concerned at all. It would be stepping too far to hold that the alleged acts of the petitioner against the witnesses would tantamount to committing breach of public order. The statements are quite general in nature. Merely because certain criminal cases have been registered against the petitioner wherein investigation is going on and when the petitioner has been released on bail in those cases , immediately the proceedings for detention were commenced against the petitioner. In any case, since the petition is allowed on the short ground that the satisfaction arrived at by the detaining authority that the alleged acts of the petitioner would tantamount to committing breach of public order is not genuine, the order of detention is vitiated, it is not necessary for me to deal with the other contentions.

In the result, this petition is allowed. The

order of detention dated 11-12-1997 is quashed and set aside. The detenu Kiran @ Kaju Badiya Bhambhor is ordered to be released forthwith if not required for any other offence. Rule is made absolute accordingly with no order as to costs.

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